IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

WEDNESDAY, THE 28TH MARCH 2007 / 7TH CHAITHRA 1929

CRL.A.No. 731 of 1999(A)

ST.34/1996 of SPL. COURT FOR E.C.ACT CASES, THRISSUR
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APPELLANT/ACCUSED:

1.SHAJI @ LENIN,S/O.VELAYUDHAN,
THAPPUKULATHIL VEEDU, UNICHIRABHAGOM,
IDAPPILLIKARA, THRIKKAKKARA VILLAGE,
KANAYANNUR TALUK.

2.RAJU,S/O.GOKULAM,MANDUTHARAYIL HOUSE,
THRIPPUNITHURA THEKKUMBHAGAM KARA,
KANAYANNUR TALUK.

BY ADV. SRI.GEORGE VARGHESE(PERUMPALLIKUTTIYIL)
SRI.A.R.DILEEP
SMT.KAVITHA GANGADHARAN

RESPONDENT/COMPLAINANT:

S.I. OF POLICE, MANARKKADU POLICE STATION,
REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.K.C.SANTHOSH KUMAR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 28/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY, J.

Criminal Appeal.No.731 OF 1999 (D)

Dated this the 28th day of March, 2007

JUDGMENT

Appellants herein are accused in S.T.No.34/1996 on the file of the Court of the Special Judge for E.C.Act Cases, Thrissur. The said case was charge sheeted by the S.I. of Police Manarkkad Police Station for offences punishable under Section 7(1), (a) (ii) read with Section 3 of the Essential Commodities Act for violation of clauses 6 and 7 of the Kerala Motor Spirit and high speed Diesel oil (Maintenance and Regulations of Supplies).

2. The allegation in the charge sheet is that the accused was found pilfering petrol from a tanker lorry bearing Reg.No.KEE 7733 parked on the frontyard of Kunnil Service Station Manarkkad at about 7.50 p.m. on 16.10.1993. They were apprehended by the S.I. of Police Manarkkad red handed with about 75 litres of petrol so pilfered from the tanker lorry.

The 1st accused is the driver of the lorry and the 2nd accused is the cleaner of the same.

3. After examining PWs.1 to 7 and DW1 and marking Exts.P1 to P5 and Exts.D1 and D2, the trial court by order dated 10.9.1998 found the accused guilty and convicted them and sentenced to undergo S.I. for 2 years each and to pay fine of Rs.1,000/- each in default to undergo for 3 months for offences punishable under Section 7 (1) (a) (ii) of the E.C.Act.

4. When the case was called, there was no representation. Since it was reported that advocate appearing for accused was no more, we issued fresh notice to the appellants. On going through the evidence adduced, it is very clear that the charges alleged against the accused were proved. After analysing the evidence therein, trial court found that the prosecution has succeeded in establishing that the accused were found pilfering petrol after breaking open the side valve of the first compartment of the tanker lorry bearing registration No.KEE 7733. The said lorry was on its way from

the installation point of Hindustan Petroleum Corporation, Kochi to a dealer at Mundakkayam. The prosecution has established that 75 litres of petrol was pilfered by the accused from the tanker lorry. So, evidently, they have violated the provisions of Clauses 6 and 7 of the aforesaid Order thereby committing an offence punishable under Section 7(1) (a) (ii) read with Section 3 of the Essential Commodities Act. Hence I find the accused guilty for the offence punishable under Section 7(1) (a) (ii) read with Section 3 of the Essential Commodities Act, 1955. Admittedly the 1st accused was the driver of the tanker lorry bearing Reg.No.KEE 7733 and 2nd accused was the cleaner. It is also stated that the tanker lorry was on its way from the installation terminal of the Hindustan Petroleum Corporation at Ernakulam to the petrol bunk belonging to one C.P.A.Yusuf at Mundakkayam. The first compartment of the tanker lorry was filled with petrol and the second and third compartments were filled with diesel. Each tank was having a capacity of 4000 litres each. It is also proved that accused were seen pilfered the about 75 litres of petrol from the first compartment of the tanker lorry. Out of the three cans which contained pilfered

petrol, one contained 35 litres of petrol and the other two cans contained 20 litres of petrol. The allegations were proved by PWs.1,2,3 and 7. It is submitted before the trial court by the petitioners that both accused have aged parents, wife and children. Therefore, accused was sentenced to undergo simple imprisonment with two years each and to pay a fine of Rs.1,000/- each and in default of payment of fine, undergo simple imprisonment for three months. Considering the facts and circumstances of the case, I reduce the sentence even though conviction is confirmed sentence is reduced from simple imprisonment for two years to simple imprisonment to six months each with a fine of Rs.1,000/- each. (imposition of fine amount is not reduced). In default of payment of the above fine, appellants each shall undergo simple imprisonment for one month. Appeal is partly allowed confirming the conviction but reducing the sentence.

J.B.KOSHY, JUDGE

prp

J.B.KOSHY

Criminal.Appeal.731 OF 1999 (D)

JUDGMENT

28th March, 2007